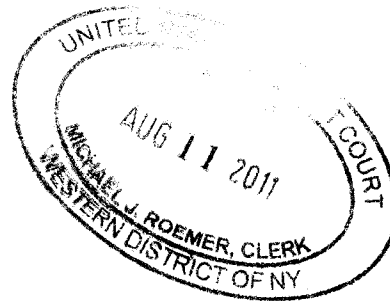


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CARLOS ABREU, 99A3027,

Plaintiff,

-v-



-PS-O-

DECISION AND ORDER
11-CV-6251CJS

ERIC FARLEY, as Correction Officer;
ROBERT MALOY, as Correction Officer;
KYLER KENNEDY, as Correction Officer;
BARRY COUNTRYMAN, as Correction Officer;
M. RANGER, as Correction Officer;
TRAVIS HILL, as Correction Officer;
MATTHEW L. NULL, as Correction Officer;
TED J. JENTZ, as Correction Officer;
RICHARD CIOFFA, as Correction Officer;
JACOB SMITH, as Correction Officer;
N. ANDRUS, as Correction Officer;
CARRIE BENCAL, as Correction Officer;
MELANIE ABBOTT, as Correction Officer;
JASON LOFTUS, as Correction Officer;
ANDREA LAWRENCE, as Correction Officer;
JOHN BROWN, as Correction Officer;
STEPHANIE ROMAN, as Correction Officer;
CHRISTOPHER SHINE, as Correction Officer;
BRIAN CROFT, as Correction Officer;
ROBERN SERENS, as Correction Officer;
MARIA GLEASON, as Correction Officer;
T. CARROLL, as Correction Officer;
DAVIS RIDDLE, as Correction Officer;
FRANK WEIDRIGHT, as Correction Officer;
RANDALL, as Correction Officer;
GERALD BENNETT, as Correction Officer;
MERSON, as Correction Officer;
ANNETTE HOLM, as Correction Officer;
KIMBERLY CHEASMON, as Correction Officer;
J. SLACK, as Correction Officer;
LINDA BANNISTER, as Correction Officer;
TERESA FALLON, as Correction Officer;
JENSEN ROBERT, as Correction Officer;
KRISTIN SALOTTI, as Correction Officer;
SUSAN CORDILESNE, as Correction Officer;
BRYCE HELMICKI, as Correction Officer;

RICHARD GOODLIFF, as Correction Sergeant;
JASON PICKERING, as Correction Sergeant;
TRACY AULT, as Correction Sergeant;
D. GLEASON, as Correction Sergeant;
J. JONES, as Correction Sergeant;
REMY BABINEAUX, as Correction Sergeant;
T. BARBER, as Correction Sergeant;
CHARLES COVENTRY, as Correction Lieutenant;
KAREN METZ, as Correction Lieutenant;
JAMES MINDE, as Correction Lieutenant;
THOMAS COREY, as Correction Lieutenant;
ANDREW GIANNINO, as Correction Lieutenant;
LEVAC TOD, as Correction Lieutenant;
LAN GARDNER, as Correction Lieutenant;
RAYMOND SZCZEPANOWSKI, as Correction Lieutenant;
GUNDERMAN, as Correction Lieutenant;
M. VALENTIN, as Correction Lieutenant;
PAUL JOHNSON, as Correction Lieutenant;
JAMIE LAMANNA, as Correction Captain;
PAUL PICCALO, as Correction Captain;
ROBINSON, as Correction Captain;
THOMAS TONEOR, as Senior Correction Counselor;
MARTALYDEE MARTINEZ, as Senior Correction Counselor;
JESSICA KENNEDY, as Senior Correction Counselor;
SUSAN GOWETT, as Correction Counselor;
MICHAEL DONOHUE, as Correction Counselor;
JUDITH A. HOLLOWELL, as Correction Counselor;
NORMAN PARRISH, as Education Supervisor;
M. RASMAS, as Chief Correction Hearing Officer;
TRACY M. SMITH, as Vocational Instructor;
ROBIN BURNETT, as Vocational Instructor;
STEVEN AVERY, as Correction Food Service Administrator;
KIM RAFFERTI, as Correction IRC/TAC Member;
PATRICK O'NEILL, as Correction I/M Griev. Supervisor;
THEODORE MORX, as Correction Rabbi/Chaplain;
MELINDA APPLEBY, as Correction Librarian Sr.;
K. WACKFORD, as Correction RPL II;
MONDI SCHULTZ, as Correction Mail L Supply Clerk;
PATRICIA ANDRUS, as Correction KBS 1 (mail);
BARBARA CENTURELLI, as Correction KBS (medical record);
JEFFREY MINNERLY, as Acting Deputy Supt/Administrator;
MATTHEW THOMAS, as Deputy Superintendent Administrator;
SHERYL ZENZEN, as Correction Deputy Supt. Security;
JOHN COLVIN, as Correction Deputy Supt of Security;
JOHN LEMPKE, as Correction Superintendent;

LUCIEN LECLAIRE, Jr., as DOCS Deputy Commissioner;
KENNETH S. PERLMAN, as Deputy Comm. Program;
GAYLE HOPONIK, as DOCS Deputy Comm. Administrative;
KAREN BELLAMY, as DOCS Director of Inmate Grievance;
J. HALE, as DOCS Assistant Director of I/M Grievance;
WILLIAM M. GONZALEZ, Deputy Counsel (DOCS);
HOWARD HOLANCHOCK, DOCS Assistant Comm. Mental Health;
KAREN A. LOEB, DOCS Institution Steward;
LINDA HOLLMEN, DOCS Director of Education;
ALBERT PRACK, DOCS Director Special Housing Program;
MAUREEN E. BOLL, DOCS Deputy Comm. and Counsel;
CARL J. KOENIGSMANN, as DOCS Medical Chief/Commissioner;
DIANE VONBURN, Assistant Commissioner/Executive Assistant;
Dr. DANIEL WEINSTOCK, Facility Health Services Director;
EILEEN R. DINISION, Regional Health Services Administrator;
WENDY LUKAS, Regional Health Services Administrator (DOCS);
VERNON FONDA, Chief of Investigations Inspector General;
L.T. BAILEY, as Facility Lieutenant;
DOCS Commissioner BRIAN FISCHER;
S. O'CONNOR, Facility DMH/MHW Nurse Practitioner;
DONALD SAWYER, as CNYCP Executive Director;
MICHAEL HOGAN, as OMH Commissioner;
JEFFRION AUBRY, as Chairman Committee on Correction;
C. GREENE, as Quality of Core Facility Review Specialist II
from Commission on quality of core and advocacy for persons
with disabilities, assurance and investigations;
BRUCE BLOWER, Commissioner from the Commission on
quality of core and advocacy for persons with disabilities;
PAT OKONIEWSKI, Commissioner from the Commission on
quality of core and advocacy for persons with disabilities;
PHYLLIS HARRISON-ROSS, MD, Commissioner from
the State Commission of Correction;
LESTER N. WRIGHT, M.D., MPH DOCS Deputy Commissioner;
DANIEL L. STEWARD, Commissioner from the New York
State Commission of Correction; THOMAS A. BEILEIN,
Chairman from the State Commission of Corrections;
DAVID M. STEINER, Commissioner from the Education
Department responsible for the License of Practice of
oversight 61 professions in NYS; RICHARD F. DAINES, M.D.,
Commissioner from the State Department of Health;
Cheryl V. Morris, DOCS Director Ministerial Services (State wide);
SHERIFF JACK STENBERG, (Romulus Sheriff);
BARRY PORSCHE, (Seneca District Attorney);
JACALYN G. HUNTER, Western Region Program
Director Office of Professional Medical Conduct State

of New York Department of Health;
PEGGY J. LOFFREDO, Field Supervisor Forensic
Medical Unit, State of New York Executive Department
State Commission of Correction;
L.C. NOVAK, Investigator Office of Professional Medical
Conduct State of New York Department of Health;
KEITH ZOBEL, Correctional Facility Specialist II State
Commission of Correction; DAVID L. MCNULTY, Major
Bureau of Criminal Investigation New York State Police;
JOSEPH A. D'AMICO, Superintendent New York
State Police Bureau of Criminal Investigation;
ANTHONY JONES, Quality of Core Facility Review
Specialist Division of quality assurance and investigations;
ANDREW M. CUOMO, State of New York Governor;
OFFICE OF MENTAL HEALTH NYS OMH;
DEPARTMENT OF CORRECTIONAL SERVICES
(NYS DOCS); STATE OF NEW YORK COMMISSION
ON QUALITY OF CARE AND ADVOCACY;
STATE COMMISSION OF CORRECTION;
STATE OF NEW YORK DEPARTMENT OF HEALTH;
SENECA MUNICIPAL and
JOSEPH MUCEDALA, Facility Media Review Committee;

Defendants.

Siragusa, J. Plaintiff, *pro se*, Carlos Abreu, incarcerated at Five Points Correctional Facility, brought an action in this Court raising a number of allegations under 42 U.S.C. § 1983, the Americans with Disabilities Act, the Rehabilitation Act, the Religious Land Use and Institutionalized Persons Act and the Administrative Procedures Act. Plaintiff was directed address certain infirmities, and his motions for injunctive relief relating to medical care and certain other matters were deferred pending his response to the Court Order (Doc. No. 5). Plaintiff responded to the Court Order indicating that he is pursuing a challenge to certain disciplinary sanctions in state court, and asking that the claims that may not proceed

in an action pursuant to § 1983 until overturned be dismissed without prejudice (Doc. No. 6). Plaintiff declined to otherwise amend his complaint.

Plaintiff thereafter filed another motion for a temporary restraining order and preliminary injunction addressing his having been sentenced in sequential disciplinary sanctions to periods of the “loaf” diet amounting to an entire month (Doc. No. 8). Plaintiff alleged that he had previously been removed from such diet on the basis of his medical condition and the serious effect such diet has on his health. Plaintiff alleges that the imposition of the “loaf” diet, and the manner in which it is being imposed, presents a serious risk to his health and violates the Eighth Amendment proscription on cruel and unusual punishment. The Court notes that Plaintiff signed that motion and supporting papers dated July 20, 2011, but the envelope in which it was mailed indicates that it was not mailed from the facility until August 2, 2011.

Given the serious nature of the allegations set out in Plaintiff’s papers, the Court hereby directs Defendants to respond to this motion by ten days from entry of this Order. Defendants are directed to be prepared to address Plaintiff’s medical condition and his medical care. Notice of this motion and Order and service of the complaint, which has not yet been served on any defendant,¹ may be made on Superintendent John Lempke, Deputy Superintendent John Colvin and Doctor Daniel Weinstock by certified mail, return receipt requested. **A hearing on this matter will be held on September 6, 2011, at 4 p.m.**

Further, Plaintiff’s request for appointment of counsel is granted. The Court hereby

¹The Court notes that it is awaiting communication from the Department of Correctional Services on alternate service methods, given the large number of DOCS defendants named in the complaint.


appoints Richard A. McGuirk, Esq., Wendell W. Harris, Esq., Andrew P. Zappia, Esq. and Michael J. Crosnicker, Esq., all of LeClairRyan, 290 Linden Oaks, Suite 310, Rochester, NY 14625, *pro bono*, to faithfully and diligently represent plaintiff in this case. Reply papers by plaintiff's counsel, if any, must be filed within 10 days after the filing of Defendants' papers

The Clerk of the Court is directed to copy that portion of the file in this matter that is not currently available through PACER on the Court's Case Management/Electronic Case Management System and send it to Richard A. McGuirk, Esq., together with a copy of this Order and the Guidelines Governing Reimbursement from the District Court Fund of Expenses Incurred by Court Appointed Counsel.² The Chief Judge of the Court will also issue an Order directing PACER to waive its fees so *pro bono* counsel can access and print at no cost to them or their firm any other documents filed herein that he may need.

The Clerk of Court is directed to serve a copy of the complaint, this motion and this Order on the above three named defendants in the manner described above forthwith. A courtesy copy of the motion and this Order shall be mailed to William A. Gonzalez, Esq., Deputy Counsel for the Department of Corrections, and Debra Martin, Esq., Assistant Attorney General In Charge of the Rochester Office.

SO ORDERED.

Dated: August 10, 2011
Rochester, New York



CHARLES J. SIRAGUSA
United States District Judge

²This information and the forms are also available on the Court's web site at the Attorney Information link from the home page located at: <http://www.nywd.uscourts.gov/document/fundreimbvoweb.pdf>.